

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RYAN A. MCCARTHY, ) Case No. ED CV 14-0564-PJW  
Plaintiff, )  
v. ) MEMORANDUM OPINION AND ORDER  
CAROLYN W. COLVIN, )  
Acting Commissioner of the )  
Social Security Administration, )  
Defendant. )

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI"). He claims that the Administrative Law Judge ("ALJ") erred when she rejected the opinions of the examining and treating doctors and when she concluded that Plaintiff was not credible. For the following reasons, the Court concludes that the ALJ erred and remands the case to the Agency for further proceedings.

II. SUMMARY OF PROCEEDINGS

In December 2010, Plaintiff applied for SSI, alleging that he was disabled due to a psychiatric disorder as well as pain in his neck,

1 back, and shoulder. (Administrative Record ("AR") 167-75, 195.) His  
2 application was denied initially and on reconsideration and he  
3 requested and was granted a hearing before an ALJ. (AR 56-59, 60, 64-  
4 68, 70-72, 73-75.) On October 10, 2012, Plaintiff appeared with  
5 counsel and testified at the hearing. (AR 24-53.) On November 2,  
6 2012, the ALJ issued a decision denying benefits. (AR 7-19.)  
7 Plaintiff appealed to the Appeals Council, which denied review. (AR  
8 1-5.) He then commenced this action.

### 9 III. ANALYSIS

#### 10 A. The Examining Psychiatrist's Opinion

11 Plaintiff contends that the ALJ erred when she tacitly rejected  
12 examining psychiatrist Estelle Goldstein's view that Plaintiff was  
13 markedly impaired in responding to work pressure in a usual work  
14 setting. (Joint Stip. at 5.) The Agency disagrees. It argues that  
15 the ALJ did not reject this limitation and, in fact, incorporated it  
16 into the residual functional capacity finding when she restricted  
17 Plaintiff to work involving simple and routine tasks, one- and two-  
18 step instructions, no quotas or rapid assembly lines, no contact with  
19 the public, and limited team work. (Joint Stip. at 7-8.) As  
20 Plaintiff points out, however, the record contradicts this argument.  
21 The ALJ herself separated the limitation for responding to work  
22 pressure from the other limitations identified above in her  
23 hypothetical questions to the vocational expert. (AR 51.) Thus, it  
24 is clear that the ALJ had not included this limitation in the original  
25 hypothetical to the vocational expert, which formed the basis for the  
26 ALJ's decision. Her failure to explain why amounts to error.

27 Plaintiff argues that the Court should accept Dr. Goldstein's  
28 opinion and remand the case to the Agency for an award of benefits,

1 citing *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996) and  
2 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). In those  
3 cases (and others), the Ninth Circuit has explained its "credit as  
4 true" doctrine. Under this doctrine, where the record is fully  
5 developed and the ALJ has failed to provide legally sufficient reasons  
6 for rejecting a doctor's opinion, the Court should credit the opinion  
7 as true and, if, in doing so, it is clear that the ALJ would have been  
8 required to find for the claimant, the Court is empowered to remand  
9 the case to the Agency for an award of benefits.

10 The Court does not find that the credit as true doctrine is  
11 applicable here. In the first place, the ALJ did not reject Dr.  
12 Goldstein's opinion that Plaintiff would have marked difficulties in  
13 responding to work stress. She failed to address the issue at all.  
14 The Court is not able to determine if the ALJ's failure to address it  
15 was intentional or inadvertent. Obviously, the Agency is not strictly  
16 liable for an ALJ's failure to address a portion of a doctor's  
17 opinion. Crediting Dr. Goldstein's opinion would be tantamount to  
18 imposing such liability in this case.

19 Second, the record does not clearly establish that Plaintiff is  
20 disabled. In addition to Dr. Goldstein's opinion, several other  
21 doctors provided input regarding Plaintiff's mental impairment. Some  
22 agreed in principle with Dr. Goldstein and others did not.  
23 Importantly, and as discussed below, the treating doctor's records,  
24 which are likely the most important, are unreadable in parts. Thus,  
25 it is very hard for the Court to sort out the medical evidence.

26 For these reasons, the Court concludes that the more prudent  
27 course is to remand the case to the Agency for further development.  
28 See *Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003) (holding

1 "credit as true" doctrine not a mandatory rule and district courts  
2 retain discretion to remand for further proceedings where ALJ provides  
3 insufficient reasons for findings). On remand, the ALJ should take a  
4 closer look at Dr. Goldstein's finding along with the other doctors'  
5 findings and determine whether Plaintiff would be markedly limited in  
6 his ability to respond to usual work pressure. If she determines that  
7 Plaintiff would not be so limited, she should explain why.

8 B. The Treating Doctor's Opinion

9 Treating psychiatrist Than Myint believed that Plaintiff was  
10 markedly limited in eight work functions. (AR 458-60.) Had the ALJ  
11 accepted Dr. Myint's opinion, it is clear that she would have found  
12 that Plaintiff was disabled. The ALJ, however, rejected this opinion  
13 because it was not "consistent with the medical record taken as a  
14 whole as analyzed above or with the doctor's treatment notes." (AR  
15 18.) Plaintiff takes exception to this finding. Here, again, the  
16 Court sides with Plaintiff.

17 The ALJ's finding that Dr. Myint's opinion was inconsistent with  
18 the record as a whole is not specific enough. *See, e.g., Embrey v.*  
19 *Bowen*, 849 F.2d 418, 421 (9th Cir. 1988) ("To say that the medical  
20 opinions are . . . contrary to the preponderant conclusions mandated  
21 by the objective findings does not achieve the level of specificity  
22 our prior cases have required . . . ."). The ALJ should have set out  
23 what evidence she was referring to and how it contradicted Dr. Myint's  
24 opinion. For that reason, this justification is rejected.

25 As to the ALJ's finding that Dr. Myint's treatment records  
26 undermine his opinion, the record is mixed. In March 2011, Plaintiff  
27 reported to Dr. Myint that he was "good." (AR 275.) Nevertheless,  
28 Dr. Myint assessed him with a GAF score at 45 and treated him with

1 medication. (AR 276.) In later visits, Plaintiff again reported that  
2 he was doing well ("I'm alright") (AR 281), and, as best the Court can  
3 tell by the chart notes (some of which are completely unreadable), Dr.  
4 Myint seemed to agree. For example, after meeting with Plaintiff for  
5 45 minutes in June 2011, Dr. Myint continued his medication and  
6 scheduled Plaintiff's next appointment for nine weeks later (AR 283),  
7 indicating, it seems, that Plaintiff was relatively stable. It also  
8 appears from the chart notes that Plaintiff's condition continued to  
9 improve over time, though, here again, the Court is at a disadvantage  
10 because it is difficult to read all of Dr. Myint's handwritten chart  
11 notes. (AR 275-84.) Thus, the ALJ's interpretation of the doctor's  
12 records and her conclusion that they did not support the doctor's  
13 opinion is, as best the Court can tell, a reasonable one. For that  
14 reason, it will be upheld. See *Burch v. Barnhart*, 400 F.3d 676, 679  
15 (9th Cir. 2005) ("Where evidence is susceptible to more than one  
16 rational interpretation, it is the ALJ's conclusion that must be  
17 upheld."). The question that remains is whether that reason alone is  
18 enough to reject Dr. Myint's opinion in toto.

19 Under the law and procedure governing social security cases, the  
20 ALJ is tasked in the first instance with determining which doctor's  
21 opinion should control. Thus, she should decide whether the fact that  
22 Dr. Myint's records do not fully support his opinion is enough to  
23 disregard the opinion. This is particularly true where the Court is  
24 unable to read some of the records and, presumably, the ALJ has the  
25 original records and is better able to read them.

26 For these reasons, this issue, too, is remanded to the Agency for  
27 further consideration. On remand, the ALJ should obtain a better copy  
28 of Dr. Myint's records if necessary and gather any medical records

1 that have been created since the case was before the Agency. The ALJ  
2 should then reconsider all of the medical evidence and explain which  
3 opinions she is accepting, which opinions she is rejecting, and why.

4 C. The Credibility Determination

5 Plaintiff testified, in essence, that his psychotic disorder  
6 interferes with his ability to function. He explained that, among  
7 other things, he hears voices throughout the day and has  
8 hallucinations. (AR 40-41.) The ALJ discounted this testimony  
9 because she found that Plaintiff's daily activities--helping around  
10 the house, watching television, taking out the trash, shopping, and  
11 driving short distances--undermined this testimony. (AR 16.) In the  
12 ALJ's view, if Plaintiff was as impaired as he claimed, he would not  
13 be able to perform these activities.

14 The Court disagrees with the ALJ's assessment. The fact that  
15 Plaintiff is able to perform the limited activities described does not  
16 contradict his testimony that he suffers from auditory and visual  
17 hallucinations that impede his ability to work. *See, e.g., Vertigan*  
18 *v. Halter*, 260 F.3d 1044, 1049-50 (9th Cir. 2001) (finding claimant's  
19 ability to watch television, walk for an hour, shop, play cards, and  
20 read does not undermine her testimony that she suffers from excessive  
21 pain). And his testimony does not suggest that the skills used to  
22 perform these activities would translate into the workplace, nor did  
23 the ALJ explain how they would. This, too, was error. *See Orn v.*  
24 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) ("The ALJ must make specific  
25 findings relating to the daily activities and their transferability to  
26 conclude that a claimant's daily activities warrant an adverse  
27 credibility determination.") (internal quotation marks omitted). For  
28

1 these reasons, the ALJ's credibility determination is reversed and  
2 remanded for further consideration.<sup>1</sup>

3 IV. CONCLUSION

4 For these reasons, the Agency's decision is reversed and the case  
5 is remanded for further consideration in conformance with this  
6 Memorandum Opinion and Order.

7 IT IS SO ORDERED.

8 DATED: June 5, 2015.

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11 PATRICK J. WALSH  
12 UNITED STATES MAGISTRATE JUDGE  
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23 <sup>1</sup> Here, again, Plaintiff asks the Court to credit his testimony  
24 as true and order an award of benefits. The Court declines to do so  
25 because probably the best indicator of the truth of Plaintiff's claims  
26 of disabling mental impairment are contained in Dr. Myint's chart  
27 notes, which the Court cannot read. On remand, the ALJ should take  
28 another look at the credibility issue in the context of all of the  
evidence and make a finding. Should the ALJ again determine that  
Plaintiff is not credible, she should explain in detail why she thinks  
so so that the Court can review those reasons in the event of another  
appeal.